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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.200 OF 2005
IN
SUIT NO.179 OF 2005

Popular Entertainment Network Ltd. ... Plaintiffs

V/s.

Ultra Distributors Pvt. Ltd. ... Defendants

Mr.N.R. Modi for Plaintiffs
Mr.Rajiv Narula with A.Dasgupta for Defendant

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 30, 2006**

P.C.:

. The Plaintiffs have filed the present Motion for interim reliefs. The prayers sought are for appointment of the Court Receiver in respect of the video rights of the suit film "Kaho Naa Pyar Hai" including the Video Cassettes and Video Compact Discs of the film.

2. The Plaintiffs have also sought an injunction restraining the Defendants from manufacturing, selling or marketing or distributing, exhibiting or exploiting the rights in the film. The Plaintiffs contend that pursuant to an agreement between the Plaintiffs and Defendants dated 20.6.2002, it was agreed that the plaintiffs would assign their video copyrights alongwith other copyrights in the suit film to the Defendants. The Defendants agreed to pay as assignees of the video rights a total consideration of Rs.50 lacs to the Plaintiffs. The parties have also agreed that the logo

of the plaintiffs would be displayed on the VCDs of the suit film for which assignment the Plaintiffs agreed to pay an amount of Rs.17,50,000/- to the Defendants. It was further agreed that this amount would be deducted from Rs.50,00,000/- and the balance of Rs.32,50,000/- would be paid over in instalments. The first instalment was to be paid on signing the agreement which admittedly has been paid. The second instalment was paid as stipulated in January 2003. It is contended by the Plaintiffs that the Defendants have violated the terms of the agreement by not displaying the logo of the plaintiffs on the VCDs in respect of the suit film as agreed in the aforesaid agreement. The plaintiffs called upon the defendants through their letter dated 18.8.2003 to explain the position within three days of the receipt of the letter by the defendants. The plaintiffs also mentioned that if no explanation was forthcoming within the stipulated period the agreement signed between them was to be terminated seven days thereafter.

3. It appears that there was no explanation given by the Defendants. The Plaintiffs called upon the defendants through their advocates' notice dated 22.4.2004 to refrain from manufacturing or dealing with the VHS or VCDs of the suit film on account of the termination of the said agreement and refund the amount of Rs.17,50,000/- paid by the plaintiffs to the defendants together with interest thereon.

Correspondence was exchanged between the parties and thereafter the present suit was filed.

4. The Defendants claimed that it was agreed by both the parties that the letter terminating the agreement would stand withdrawn and that this agreement was reached in the presence of an arbitrator. The defendants contended that they informed the plaintiffs that both the parties should conduct themselves as they did prior to the letter of termination of 18.8.2003. The defendants also contended that the plaintiffs have, despite the letter of termination of agreement, accepted the instalment payable in January 2004. It is submitted that on taking inspection of the VCDs which the Plaintiffs claimed did not bear the logo as agreed, it was noticed that the VCDs were pirated versions of the film. The Defendants contend that they have not at any point of time breached the agreement. Therefore, they contend that no orders of interim relief are necessary and that the Motion ought to be dismissed.

5. According to the Plaintiffs they became aware of the breach of the agreement prior to August 2003. The notice has been issued on 18th August, 2003. However, the suit was lodged on 30.12.2004. The Plaintiffs did not move the Court for ad-interim relief till February 2005. The Motion was made returnable in the normal course because they remained absent when it was to be heard for ad-interim relief. In my view, this conduct

of the Plaintiffs indicates the seriousness with which they viewed the alleged breach of the agreement. Furthermore, it appears prima facie that the parties had agreed that the letter terminating the agreement would stand withdrawn and it was for this reason that the Plaintiffs accepted the instalment payable for the year 2004. Apart from this it would be very difficult to assess at the interim stage whether the Compact Discs which the Plaintiffs rely on are pirated or genuine ones manufactured by the Defendants, without the Plaintiffs' logo. The Defendants have not been given inspection of the Compact Discs on which basis the notice dated 18.8.2003 was issued to them by the Plaintiffs.

6. The Notice of Motion is dismissed.